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MAR 31 1936
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 692

HARTFORD ACCIDENT & INDEMNITY COMPANY,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. WALTER W. McLAUGHLIN, DIRECTOR OF AGRICULTURE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

REPLY BRIEF FOR APPELANT.

J. F. DAMMANN,
ARTHUR L. ISRAEL,
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Counsel for Appellant.

WILSON & McILVAINE,
Of Counsel.

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It is contended by the appellee in this Court as in the Supreme Court of Illinois that the Illinois Act covers both State and interstate commerce (State's brief 8).

One of the points made in support of this proposition is that Congress has recognized the right of the State to make concurrent legislation with reference to agricultural products (page 5.V, and page 27).

It invokes in this connection the section of the Federal statute quoted in our brief in chief at page 13. (See also page 27 of State's brief.)

The position is that Congress specifically reserved the right to the States to enact laws covering the same subject matter.

But we submit that the statutory provision precludes any such construction. It specifies "except insofar only as they are inconsistent herewith or repertinent hereto".

The statutory provisions here involved are mutually exclusive.

Consider the basic provisions of the two statutes with reference to licenses.

The Federal statute says you cannot engage in this business without a license (Sec. 3a).

It then says that unless the secretary refuses to issue a license for the reasons stipulated in the act (4b) the secretary "*shall* issue to such applicant a license which shall entitle the licensee to do business as a commercial merchant, etc." (Italics ours.)

So that an applicant would be entitled to a license as *a matter of right* to do that business.

The Illinois Act provides the same. It says you cannot do this business without a license (Sec. 1). It then provides that except in the case of refusal or revocation for a reason specified in the statute "the director *shall* thereupon issue to such applicant a license entitling the applicant to conduct the business, etc." (Italics ours.)

It is obvious, therefore, that if the Illinois Act is to be given an interstate effect a commission merchant with a Federal license (directly contrary to the Federal statute), would not be permitted to do that business.

The same is true with reference to the bond:

The Federal Act says you are *entitled* to a license without a bond. The State statute says you *cannot get* a license without a bond.

Hence, if an applicant for Federal license secured one he could not operate without the Illinois license. Again directly contrary to the Federal act.

The Congress not only left out the provision requiring a bond, and did so on purpose, as pointed out in our brief in chief, but the act expressly provides (Sec. 4b) that the secretary may in certain cases of a bad record, etc. issue a license when a bond is furnished.

We submit, therefore, that the provisions of the two acts are mutually exclusive, inconsistent, and repugnant.

Respectfully submitted,

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